

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NO: 98-00769

AUG 21 1998

COUNSEL: NONE

HEARING DESIRED: NO

[REDACTED]

Applicant requests that he be promoted to the grade of Airman Third Class (E-2) earlier than 1 February 1955. Applicant's submission is at Exhibit A.

The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). Applicant has provided a response (Exhibit E).

The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinion appear to be based on the evidence of record and have not been adequately rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. Thomas S. Markiewicz, Mr. Henry Romo Jr., and Mr. Walter J. Hosey, considered this application on 19 August 1998, in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


THOMAS S. MARKIEWICZ
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinion
- D. AFBCMR Ltr Forwarding Advisory Opinion
- E. Applicant's Response



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

31 MAR 1998

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPPWB
550 C Street West, Ste 09
Randolph AFB TX 78150-4711

SUBJECT: Application for Correction of Military Records - [REDACTED]
[REDACTED]

Requested Action. The applicant is requesting he be promoted to A3C (E-2) earlier than 1 Feb 55, the date he ~~was~~ promoted.

Reason for Request. Applicant states he was promoted to A3C when he departed Basic Military Training (BMT) but the promotion was denied by his **commander** when he arrived at his **first** duty station.

Facts. The applicant enlisted 25 Aug 53 in the grade of Airman Basic (E-1), was promoted to A3C (E-2) 1 Feb 55, promoted to A2C (E-3) 1 Jun 56, promoted to A1C (E-4) 1 Sep 59 (A1C (E-4) redesignated Sgt (E-4)), and to **SSgt (E-5)** 1 Dec 68. He retired 1 Oct 73 in the grade of SSgt.

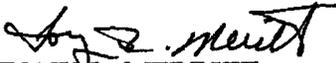
Discussion.

a. The application has not been filed **within** the **three** year time limitation imposed by AFI 36-2603, paragraph 3.5. The applicant claims that he ~~was~~ aware of the alleged error or injustice 31 Oct 53 and went to the legal office but nothing could be done. He has failed to provide any rationale for the delay in **filing an** application or taking any action **although** he states he discovered the alleged error or injustice almost **45** years ago.

b. In addition to being untimely under the statute of limitations, the applicant's application may also be dismissed under the equitable doctrine of **laches, which** denies relief to one who **has** unreasonably and inexcusably delayed asserting a claim. Laches consists of two elements: Inexcusable delay and prejudice to the Air Force resulting therefrom. In the applicant's case, he waited **almost 45 years** to file and there is no indication he took any action on the claim before that. He states although the mood of the country ~~was~~ to rectify **an** injustice, his military and civil service careers came first. The fact is, he did nothing about the alleged injustice ~~or~~ almost **45** years.

c. Applicant's unreasonable delay has also caused prejudice to the Air Force. Relevant records have been destroyed or are no longer available, memories have failed, witnesses are unavailable, the requested remedy (promotion to A3C (E-2) with back pay and allowances and possible earlier promotion for subsequent grades) would be unconscionably burdensome/unworkable. The applicant has provided a copy of Special Personnel Processing Squadron dated 27 Oct 53 which reassigns him to [REDACTED]. This order reflects his grade as A3C. He did not furnish a copy of the promotion order promoting him from AB to A3C during this time frame but a copy of the order that promoted him to A3C effective 1 Feb 55. The record also reflects the applicant was AWOL, 29, 30, and 31 Dec 53 which may have been a reason he was not promoted prior to 1 Feb 55. In short, the Air Force asserts that applicant's unreasonable delay regarding a matter now dating back almost 45 years has greatly complicated its ability to determine the merits of his position.

Recommendation. Recommend the applicant's request be time barred. Should the Board choose to decide the case, recommend it be denied based on its merits.


TONY R. MERRITT
Chief Inquiries/AFBCMR Section
Enlisted Promotion & Mil Testing Br